REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LETTERS PATENT APPEAL NOS. 2682-2711 OF 2005

% **Date of Decision** :19th March, 2007.

Narain Singh & Ors .... Appellants.
Through Ms. Rani Chhabra, Advocate.

VERSUS

B.S.N.L. & Ors .... Respondents.
Through Ms. Premlata Bansal and Mr.M.M.Sudan, Advocates.

CORAM:
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR.JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J :

1. The present Letters Patent Appeals have been filed by 30 employees of Bharat Sanchar Nigam Limited (hereinafter referred to as the BSNL, for short)- a Public Sector Company.
2. The appellants were earlier Group-B and C employees of Directorate of Telecommunication, Ministry of Telecom,

Government of India.

3. In 2000, the Government of India formed BSNL and the assets and liabilities of the Department of Telecommunication were transferred to the said company. Employees working in various cadres of the Ministry of Telecommunication were put on deemed deputation with BSNL till they exercised their option.
4. On 14th January, 2002, BSNL called upon the employees working on deemed deputation to exercise their option/willingness for permanent absorption in BSNL. The appellants opted for BSNL and are now employees of BSNL .
5. The appellants were in possession of accommodation allotted to them from the State Pool. The said accommodations had been allotted at the time when they were employees of Ministry of Telecommunication, Government of India.
6. In 2003, BSNL started deducting tax at source in terms of Circular No.9 of 2003 dated 18th November, 2003 issued by the Income Tax Department by adding 10% to the taxable salary of the appellants as 'perquisite' as the appellants were in possession of official accommodation.
7. The appellants protested against the said deduction of tax at source and stated that this was illegal and 10% of their salary cannot be deemed to be a 'perquisite'. In the meanwhile, BSNL also

introduced IBA scales of pay replacing the existing LDA scales of pay for the executive staff-group B employees absorbed in BSNL w.e.f. 1st October, 2000. In terms of the said pay scales, BSNL executives were entitled to House Rent Allowance on the basis of revised pay scales w.e.f. 1st October, 2000, as per the terms applicable to Central Government employees based upon reclassification of the cities as notified by the Government of India.

8. The appellants herein filed a Writ Petition (C) No. 9898-9927/2005 against deduction of tax at source on “the perquisite”. The said Writ Petition was dismissed by the learned Single Judge vide Order dated 30th May, 2005. Learned Single Judge held that tax deducted at source is being made by virtue of the amendment to the Income Tax Rules, 1962 in 2001 and therefore the Writ Petition had no merit.

9. Learned counsel for the appellants submitted that the appellants at the time of absorption in BSNL were given to understand that the existing Government Rules and Regulations would apply and therefore deduction of tax at source by virtue of amendment to the Income Tax Rules, 1962 in 2001 is contrary to law and against the principle of promissory estoppel.

10. Learned counsel for the respondents-BSNL and the Income Tax Department, on the other hand, submitted that amendment to the

Income Tax Rules is legal and valid and BSNL is liable to deduct tax at source on the salary paid in accordance with law. Principle of promissory estoppel has no application.

11. We have examined the contentions raised by the parties and gone through the record. At the time of absorption of the appellants in BSNL, general terms and conditions for absorption were circulated. Clause 10 of the general terms and conditions of absorption reads as under:-

> "10. Residential Quarters:-
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> The DOT officers, who are allotees of BSNL quarters, will continue to occupy the same on "as is where is basis" even after permanent absorption in BSNL. However, the officers who opt for BSNL and are occupying quarters from the estate pool would be allowed to retain the same up to 30.9.2005 on payment of standard license fee."

12. The aforesaid Clause states that officers who opt for BSNL and were occupying quarters from State Pool would be entitled to retain the accommodation upto 30th September, 2005 on payment of standard licence fee. What was the standard licence fee was not stipulated. Further the appellants are not challenging or questioning or stating the standard licence fee as applicable to Government Servants was not charged from them upto 30th Sept.,2005 as stated in clause 10. The grievance of the appellants is against deduction of

tax at source in accordance with the amended provisions of the Income Tax Rules w.e.f. 2001. Clause 10 quoted above does not deal with deduction of tax at source. No assurance was given to the appellants that tax at source in accordance with law will not be deducted. In fact no such assurance could have been given. Every employer be it Government, Public Sector Undertakings or private company has to comply with the statutory provisions relating to deduction of tax at source. It is also well known that deduction of tax at source is done as per the provisions of the Income Tax Act and the relevant Rules. The Income Tax Act and the Rules, everyone is aware, are modified from time to time and by the Finance Act, which is passed every year. Income Tax Act and the Rules change form time to time and do not remain static. Therefore, the contention of the appellants that because of the principle of promissory estoppel, the respondent BSNL should be restrained from deducting tax at source as per applicable Rules, is liable to be rejected. The said submission cannot be countenanced. No such promise was ever made. It is well settled that principle of promissory estoppel does not apply to statutory enactments and mandatory provisions stipulated in the Statutes.

13. The provision of deduction of tax at source under the Income Tax Act only facilitates collection of tax. It is only a mechanism to collect

tax. The employee is given benefit and credit of the tax deducted at source. However, on the basis of assessment, assessee is entitled to refund of the tax already paid by him or tax deducted at source credited to his account. The Income Tax Department is under an obligation and duty to refund the excess tax. In case of delay, it is liable to pay interest. [See observations of the Supreme Court in ***Transmission Corpn. Of A.P. Ltd. Versus CIT***, reported in (1999) 7 SCC 266].

14. Recently, the Supreme Court in the case of ***Arun Kumar and others versus Union of India and others*** reported in (2007) 1 SCC 732 examined constitutional validity of Rule 3 of the Income Tax Rules, 1962 as amended in 2001. Constitutional validity of the amendment was upheld. However, the Supreme Court held that Rule 3 applies when there is “concession” in the matter of accommodation provided by an employer to an employee. It was held that this jurisdictional fact mentioned in Section 17(2)(ii) has to be established before calculation of “concession”, under Rule 3 of the Income Tax Rules, 1962 can be made. In case, there is no “concession” then Section 17(2)(ii) of the Income Tax Act, 1961 will not apply and in the absence of the said “jurisdictional fact”, computation under Rule 3 is inconsequential. Rule 3 was held to be merely a machinery provision included in the subordinate

legislation, which applies only if there is “concession” in the matter of providing accommodation by an employer to an employee. To this extent, the petitioners will be entitled to take advantage and benefit of the said judgment, subject of course, to further amendment in the Income Tax Rules, 1962 and the Income Tax Act, 1961. It may be mentioned that some further amendments have been proposed in the recent budget presented in the Parliament in Feb.,2007.

15. However, in ***Arun Kumar*** (supra), the Supreme Court also examined the question of classification and discrimination between Central and State Government employees and employees belonging to companies, corporations and other public sector undertakings. It was held that doctrine of equity has limited place in taxation statutes and the classification cannot be struck down as ultra vires on the ground that it violates Article 14. Reference was made to another recent decision of the Supreme Court in the case of ***Confederation of Ex-Servicemen Association versus Union of India*** reported in (2006) 8 SCC 399 and it was held that rule making authority is competent to distinguish between employees of the Central and the State Government and other employees. It was further held that the classification made in Rule 3 has rationale and nexus with the object to be achieved and it takes into consideration

that service conditions of government employees are different from employees of government owned corporations, private companies, and other undertakings. Reference was made to Article 311 of the Constitution of India and it was observed that certain benefits are not available to employees of companies, corporations and undertakings, etc.

16. In view of the findings given above, we find no merit in the present Appeal and the same is accordingly dismissed. However, in the facts and circumstances of the case there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

MARCH 19, 2007.
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